



HULL PLANNING BOARD

253 Atlantic Avenue, 2nd floor
Hull, MA 02045

Phone: 781-925-2117

Fax: 781-925-8509



July 23, 2014

Members Present: Jeanne Paquin, Chair, Jennifer Berardi-Constable, Vice Chair, J. Timothy Reynolds, Joseph Duffy, Nate Peyton, Harry Hibbard

Members Absent: Steve Flynn

Staff Present: Robert Fultz, Community Development & Planning Director
Ellen Barone, Administrative Assistant

7:30pm J. Paquin called the meeting to order

Alan Stein of the Hull Times stated that he would be recording the meeting.

J. Paquin opened the Continuation of a Public Hearing on an application under the Subdivision Control Law for **Approval of an Amendment to Definitive Plan** filed by **Adam J. Brodsky, Esq.** which seeks a **Roadway Extension to North Truro Street** and read the Public Hearing Notice.

Correspondence containing comments regarding the project were read aloud as follows:

Department of Public Works, Joe Stigliani – dated 7/23/2014
R. Fultz to D. Miller of Hull Light Plant – dated 7/21/2014
Aquarion Water, Jeff Farrell – dated 7/22/2014
Irwin Nesoff – 165 North Truro Road – dated 7/11/2014

John Chessia, P.E. performed a peer review on the project on behalf of the Board. His responses were submitted in correspondence to R. Fultz dated July 17, 2014. Mr. Chessia's review was based on Compliance with the Town of Hull Rules and Regulations Governing the Subdivision of Land. The Board and the applicant have both received copies of Mr. Chessia's report. As part of the review Mr. Chessia explained that his review gave the comments of whether or not a section was complied with, does not comply or needs a waiver or if more information is required.

Mr. Chessia highlighted some of the more important. Under Section 4 Design Standards, it is his understanding that the road was approved back in the 1920's that was not completed. The section was to loop around with No. Truro Street, So. Truro Street and Chatham Street portions of those roads have not ever been completed. In the definition of Streets and Ways, the Applicant has listed it as a Minor Street. There are two possible definitions that could be used; it does not actually meet either of them completely. A Minor Street is the road that is there now as far as complying with the regs. A Minor Street has certain detail section requirements. A Dead End Minor Street is the other one which is a very small road with a certain number of lots. There are too many lots and the road is too long to be a Dead End Minor. As a Minor, the road is narrower than what would be required. He explained that this information was in the definitions section and the Board should keep that in mind as he goes through the letter.

Under the Location of Streets section there are general conditions. Commenting on Section; he is aware that others have been asked for comments but generally in a case like this you have a road. Right now it just ends, there is no circle, there is no turnaround, the road is of variable width and it appears to him that certain areas have pull outs in front of houses, there are smaller lots without on-lot parking and some of the wider areas

appear to be for parking. There is a proposal to provide some widening in the end and some turnaround areas. His concern is that right now people park on the road so any consideration of the Public Safety Officials to turn around should be in consideration of where the cars are going to park. Section C requires that streets project; in other words the roadway would connect to another roadway so that you don't have long dead ends that something could happen and you couldn't get to the end. Originally this road was designed to loop, it was never constructed. This proposal would actually prevent it from ever happening because the drainage is in the roadway so there is no way you could ever project it to the other. There may be other considerations; such as floodplain and wetlands that may prevent it but this would stop it in the road. Section 3 – Width, Alignment and Grades of Streets includes a table with requirements. As a Minor Road, the existing Right of Way is 40 feet wide and a 46 foot width would be required. The Applicant has listed this in their submittal and did not request a waiver because it is the existing road now. The next is the width of the roadway itself; you have the right of way which is the property line and the roadway is the pavement. The pavement of a Minor Road is required to be 25 feet wide they are asking for a waiver to 20 feet wide. The road right now is a variable width; where it currently ends according to the plan it is 27 feet wide because there is room to park in front of #218. There was an area on the plan that was 19 feet wide. A waiver was not requested however they noted that the road has a center line radius of 53 feet, there is a fairly sharp curve before you get to the end of the road as it exists today and as it is proposed to exist it wouldn't comply with the current center line radius. If it were considered by the Board to be a Dead End Minor Road, they would need a waiver for length of the dead end, and a waiver for the number of houses. Dead End Minor Roads only require a 40 foot right of way and only a 21 foot paved width. The grading indicated on the plans are in the right of way and in some areas is steeper than would be allowed even outside of the right of way. Section 3 – g – When the roadway grade changes, there is a vertical curve to adjust the grade. What is required in the regulations for the vertical curves is a 250 foot sight distance on the vertical curve. In the case of this particular project, it wouldn't do you a lot of good to see 250 feet when the road is ending in about 50. The Applicant can either state that they comply or request a waiver from it. Mr. Chessia recommends that the plans be revised to address the concerns of the Wastewater Treatment Plant Manager. Section 4 – Dead End Street – The regulations state that the maximum length of a dead end allowed is 800 feet. The plans should specify the length of the roadway from the nearest through road which would be Dennis Street. The plans indicate that the length of the road would exceed 800 feet. A waiver should be requested. The regulations require a turnaround and there is not one proposed. A waiver should be requested.

Section C – Subsurface Storm Drains - Section 2 - There were no test pits dug in the roadway however based on the closest test pit; groundwater would likely be within four feet of the finished grade for at least part of the roadway. There is also some ledge on the uphill side that will need to be removed and the depth is not known. Based on the available information, subdrains would be required and there are none proposed. Subdrains should be added or a waiver requested. Section 3 – Storm Drains – There are no storm drains proposed. They have proposed a stormwater design for protection of wetlands based on Wetlands Protection Act and not consistent with the requirements of the regulations. The Regulations were implanted prior to the Wetlands Protection Act and new methods of stormwater designs. Waivers would be needed or the design would need to be changed. Section 3a – Based on the Regulations, catch basins would be required. A waiver should be requested or the design changed. Section 3b - There are no manholes proposed, manholes should be added or a waiver requested. Section 3d – Drains are required to be 12 inches in diameter at a minimum of 0.5% slope. They have 8 inch pipes at less than 0.5% slope. The plans should be revised to conform or a waiver requested. Section 3e – The pipes do not end in headwalls. A waiver should be requested.

Section D – Open Drainage Systems – There is somewhat of an open drainage system along the side of the road because they have these turn outs and then a swale with a plastic catch basin to pick up the runoff. If you have swales, they are supposed to have a 4.1 slope and they have generally a 3.1 side slope. A waiver is need for that.

Section F – Sidewalks – A waiver has been requested from this requirement.

Section I – Protection of Natural Features – The site is near the Weir River, salt marshes and wetlands. There are no particular special performance standards for that, it just states that the Board should take a look at that and consider whether or not there are natural features that should be protected.

Section J – Cases in Which Ways Are Not Adequate – This is typically you would get feedback from various Town Agencies i.e. Police, Fire, DPW. What the regulations allow is that if the way is not adequate in certain regards then you can have a way upgraded to improve it to make it more adequate. There is only so much you would for certain conditions that you have but that is something that if for example the fire department said I just can't around this specific corner but if they added 3 more feet around this edge he could make it. If you had comments to that effect, that is just something that you could consider.

Section K – Municipal Services – (2) – There was no data on the plans about electric, telephone or cable. There is a pole there but it looks like to get power to that area you would have to add a pole based on what he saw. (3) Comments have been received from the Sewer Department (4) Aquarion Water stated that they needed to extend the 6 inch line. (5) The Fire Chief should comment on the location of the fire hydrant. (6) It is not know if a fire alarm box is required by the Fire Department. (6) It is not know if there are any street lights on North Truro Street or if the Board would require one. (8) If gas is available and proposed this should be noted.

Section 5 – Specifications for Construction of the Required Improvements – D. Drainage System– The storm drains are supposed to be concrete with a minimum cover of 2.5 feet. The catch basins proposed are plastic. They do not meet the material or dimensional requirements. There are no manholes or subsurface drainage. The pipe trench detail should show materials that comply with the regulations for materials. They may ask for waivers for storm drains and things but relative to the materials used for construction generally that shouldn't be a problem to provide the right materials, the right back fill, the right gravel. J – Curbing – There is one small area that has a curb in one of the turnouts that he believes is to prevent wash out into the neighboring property but there isn't a continuous curb or berm; it is set up is that the water would flow off the road into the swale and into the basins on the side so it is not consistent to curb details. K. Grass Plots, Hydrants, Utility Poles, Transformers, Junction Boxes and Fire Boxes – (1) The grass plot does not comply with typical cross sections, typically the grass plot slope to the road but in this case it is a swale. (2) They do not propose any utility poles or hydrants proposed if they are proposed they should be no more than 2 feet off the pavement and should be shown on the plans. L- Street Trees – Street are required and none are proposed. If they are not proposing then a waiver will be required.

J. Duffy asked Mr. Chessia if he had done a summary for the Board of what he believed needed a waiver. The Board has a request for three from the Applicant. Mr. Chessia added that the Applicant may also request other waivers and may also disagree with his views and argue that a waiver is necessary. It will then be up to the Board to decide if they are needed. After the Applicant has presented the replies to the review, it may make sense to go back through and do a recap of what they are, where we agreed that they are required or requested. Mr. Chessia pointed out the project area on a partial plan of the subdivision. Mr. Horne also distributed a portion of a plan that illustrated his lots and the layout of the road.

J. Constable asked for clarification on the required width for the extended portion of the road. Mr. Chessia stated that the required width for any minor road is 25 feet. They are proposing to put in 20 feet of pavement. They have asked for a waiver of the 5 feet. J. Constable asked if there was parking proposed on the property. Mr. Brodsky answered that 2 parking spaces were proposed beneath the house. J. Constable asked about the steeper grade that was mentioned and if Mr. Chessia saw that as a problem for the road or the edge. Mr. Chessia stated that the pavement grade complies with the requirements, it is the shoulder grade. Normally you will have a relatively level shoulder on the side of the road that snow can be plowed to or cars might pull on to the grass. In this case, there are some gravel areas where cars could pull off the pavement and turn in and turn out and turn around. Between that there is grass that is sloping in like a swale, the water would come off the road and get caught in the small basins on the downhill side. On the uphill side they just grade to meet within the shoulders. J. Constable's concerns might be that they may become a hazard in winter if the water is collecting there and freezes. Mr. Chessia explained that the water is supposed to get collected in the catch basins at the lower point and then pipe it away to the other system in the back. If a plow plowed the snow into the shoulder and it freezes it could be a problem. The bigger concern would be that if someone drove off the edge it is relatively steep.

J. Duffy asked for clarification regarding parking on the street and parking for the lot to be developed and if on street parking would be a safety issue. Mr. Chessia stated that he was mistaken about Mr. Horne's lot, the

plans do not show parking and there is no on lot parking at #218. The Applicant is asking for a waiver for the width. Mr. Chessia explained that if you have a 25 foot road and a car that is 6 feet wide is parked at the side of the road there is still going to be enough room to get by easily. If you had a 20 foot road and a car parked at the side of the road it gets a little harder to get around with a bigger vehicle. J. Duffy asked if a site visit would be beneficial. Mr. Chessia agreed.

N. Peyton asked for clarification regarding Mr. Chessia's comments regarding the hydrants. Mr. Chessia stated that the plan did not show where the nearest hydrant was located to indicate that one was not necessary. The Fire Department may state that they want one and you would want to do what they ask. The water company may also want something to allow flushing of the lines. This should be coordinated with the water company and the Fire Department. N. Peyton asked if Mr. Chessia recommended not waiving the materials. Mr. Chessia stated that they should use the specified gravel, back fill materials, and pavement should meet the spec for pavement and it should be shown on the plan that they are using these materials. It will be a Town Road so they should use the materials that the Town requires.

J. Constable asked if the Stormwater design proposed meets the current standards. Mr. Chessia explained that the current standards for the Board are the Planning Board regulations. What the applicant has done was made a submission to the Conservation Commission and received a Superseding Order of Conditions from DEP. DEP says it meets their regulations to protect wetlands but that is an independent sort of thing. Just because it meets that doesn't mean it meets another thing. Often times a Highway Department person and a Conservation person don't always see eye to eye on everything and usually the Planning Board regulations are written for more from the DPW's perspective than the Wetland's perspective. They are not always compatible however road drainage is a little different.

H. Hibbard asked if the Superseding Order from the DEP precluded the Board from adding their own additional conditions. Mr. Chessia answered that it is totally independent.

R. Fultz stated that Mr. Chessia had done a thorough review. His review resulted in approximately 46 questions, comments or recommendations. A number of Mr. Chessia's comments or questions were specific to other departments, i.e. fire, police, DPW, sewer and water who have been asked to review Mr. Chessia's report and respond back.

Mr. Brodsky noted that Steve Bernstein and the Hornes were present. Mr. Brodsky stated that fundamentally they don't have any disagreement with Mr. Chessia's analysis if they were building a new subdivision and installing a new subdivision road, they would have to comply with the design standards. They maintain that they are not building a subdivision and not building a subdivision road and not even seeking to amend a subdivision plan, they are seeking to build the unconstructed portion of what was to be a public way. We don't think that the design standards apply which is why there are so many discrepancies. Mr. Brodsky told the Board that if you want to apply the design standards to this non subdivision public way, it is certainly their discretion. They recognize that which is why they submitted a request for waivers. They received Mr. Chessia's letter just a couple of days ago and have been digesting it. So what they have done is updated their waiver letter to adopt Mr. Chessia's waivers because they can't comply. They don't think they need to comply but simply can't comply. Mr. Brodsky submitted the updated letter (dated 7/23/14) to the Board. They do not think that this meets the definition of a dead end minor street.

Mr. Brodsky submitted a letter to the Board dated July 23, 2014 relative to Captain Daniel Evans, HFD response to the Boards request for comments regarding the project. He stated that Capt. Evans was neutral in his response. Mr. Brodsky stated that while going through the Conservation Commission process for this project, the preliminary plan was forwarded to the Fire Department. In his letter was the response from the Deputy Fire Chief stating his approval and a copy of the plan. Mr. Brodsky is not aware that the Fire Department or DPW have said anything that there was any requirement for a fire hydrant. They have addressed the parking as stated; parking will be on the house lot. Mr. Brodsky stated that with respect to the stormwater system in the layout of the road, Mr. Chessia is correct that that is the only place where they could put it. They will need to ask the Selectmen for permission to do that, the selectmen have advised them to come before the Planning Board but ultimately the Selectmen will have to give them permission to do that. He told the Board that you could never build further extension of that road because on the other side of the

stormwater system is saltmarsh and you cannot alter saltmarsh even for municipal projects. With respect to the width of the road, he wanted to remind the Board that the Conservation Commission specified the 20 foot roadway because they wanted to minimize the amount of pavement out there because they perceived that as being important for environmental protection. He stated that they actually advocated for a wider road but they said no.

Regarding the Stormwater Management, Mr. Brodsky stated that he disagreed with Mr. Chessia on some minor respects; he told the Board that their Stormwater Standards which were intended to apply to Subdivisions were done in 1988 and have not been updated. At that time they talked about large detention basins, concrete structures, stormwater management has evolved and the currently thinking is reflected in the DEP's stormwater standards. He does agree with Mr. Chessia that the stormwater standards were designed principally for environmental protection but they go beyond that. In fact those stormwater standards have been adopted by most towns in the adoption of their stormwater bylaws. All of the modern elements have been incorporated into the stormwater design standard because they needed to comply with the modern DEP Standards. It is a low impact development (LID) a Best Management Practice. There is very little maintenance associated with these LID systems. Notwithstanding, there is a detailed Operation and Management Report that was incorporated in to the Stormwater Report that was reviewed by Dave Nyman, the consultant that worked with the Conservation Commission. Mr. Brodsky stated that it may not be appropriate for the Board to required additional stormwater requirements for this project relying on standards from 1988 under these circumstances. With respect to the materials, the thickness of the pavement etc.; he stated that they got those specs from the DPW. If you want something different than what the DPW wants, that is certainly within your purview. He stated that they spoke to the DPW and asked "what do you want to see out here" and this was designed with that. He believes that the DPW comments stated that they comply with that.

Mr. Bernstein a Registered Professional Engineer stated that they have worked with comments from various departments and the Subdivision Control Law and incorporated those details into the plan as necessary. I would be easy to change materials. We are extending the pavement 35' for this road. There is an existing area of asphalt that was found while doing test pits that is indicated on Plan 1 which shows the existing conditions. This extends about 27' from the existing paved road. When you measure the length of No. Truro Street from Dennis, it measures about 850 now as a dead end road, there is already more than 7 lots on it and there is not enough room to turn around in the road. There is no current turnaround in the road. We are adding into our design, the ability to do a turnaround and we have maximized that turnaround as much as possible in order to get a 40' turnaround area.

R. Fultz asked if the letter received is certification as required by the regulations. Mr. Brodsky stated that there was a certification in the last paragraph. J. Lampke stated that the letter does not specifically show the word certification but implies that it is Mr. Armstrong's professional opinion, therefore it is needed for the record that this is represented to be a certification in accordance with the Subdivision Rules and Regulations. Mr. Bernstein represented that the letter of Strong Civil Design letter of 7/23/14 has been submitted as a certification.

"J Duffy, stated that Mr. Brodsky had mentioned a few times in passing "why are we utilizing the Subdivision Regs" or why are we going through the Subdivision process.

He referred to a previous document by J. Lampke that he stated discussed the purpose of having subdivision laws and regulations. He read from the letter: "your project appears to be an amendment to the subdivision plan and involves improvements and construction of a street" J. Duffy asked how are they amending this 1921 plan? There is a reason why it is before us under a subdivision, it would be before us anyway. We are under time constraints as discussed at the previous meeting. He stated that he would like to not be under some of the time constraints because this is a little complex. He thinks that a little more time is needed. It could always be extended.

J. Duffy continued – this is certainly not a subdivision because he is not dividing anything here, there are six little lots that he owns. So it is clear that there is no subdivision. Speaking to J. Lampke, he stated that in his March 14th letter to Mr. Brodsky was told that this is an amendment to the subdivision plan, if it is, he would like to hear why, and if it is not, maybe we do not need to proceed under subdivision regs, but they said they

were willing to proceed that way but maybe we don't have to do a formal subdivision. There is a lot to it, the regs are voluminous; we can follow the ones for the roads, etc., but the legal hoops that have to be jumped through in the procedures could be done without. Where is the amendment to the plan and why did you pick this way to do this; and can it be done another way that simplifies things.

R. Fultz answered that the way this was approached was that the original subdivision plan, shows that it is a roadway that goes through and not a dead end. They are placing a stormwater control system within the right of way and you will no longer have the opportunity, even though it is a paper street to drive through any time in the future. So it is an amendment to create a dead end.

H. Hibbard stated that it seems to him that time and the presence of the saltmarsh and developing environmental regulations did a lot more to amend that plan by making the loop virtually impossible under current conditions so he is struggling with the idea that because the road is supposed to go all the way through and they are proposing a dead end that that is somehow an amendment of the subdivision plan.

J. Lampke stated that they have all acknowledged that this is an unusual situation and they are trying to see where it best fits in under the regulatory process that has been created by law. It was his feeling as well as the other departments involved that it does appear to be an alteration or modification or an amendment to the subdivision plan that is of record. That plan shows certain characteristics of the road and those characteristics are now being changed. Under Chapter 41 Section 81W, the Planning Board has the power on its own or a petition by someone to modify, amend or rescind this approval of a plan of a subdivision or to require a change in a plan as a condition for retaining the status of an approved plan. There are a variety of factors and we are trying to get to the end. Mr. Horne wants to extend the road to reach his lot; the Selectmen wanted the input from all Departments including the Planning Board. They will take those recommendations into consideration as they discuss what they need to do in order for the Selectmen to give permission for what they are proposing to do. It appears that it is affecting the existing subdivision plan that is of record and that the more appropriate and cleanest way to deal with this would be under the subdivision process. The Planning Board is not just relative to the subdivision but also to provide the Selectmen with the benefit of your input so that they can decide what conditions are appropriate. As a practical matter, if we can address the subdivision issues, they have requested a waiver of them; if we go through that process that addresses any issues that someone might raise in an appeal that this should have followed subdivision process and it didn't for this reason or that reason. If ultimately at the end of the day, everyone is satisfied with the waivers, it certainly puts the approval of the Planning Board in a much stronger position to be defended if it were to be challenged. You have said that it is a subdivision, whether it is or isn't can be debated but if it was, you have addressed it with the subdivision and if it is not, it is an alteration of a Town road, so you have also addressed it under the appropriate concerns under a Town road. H. Hibbard shares the concerns of J. Duffy about the complexity that this is causing the Board in terms of making this decision under time concerns. His suggestion is to look at the waivers and decide whether there is anything that is alarming or concerning and if not, take a vote on approving the waivers en masse and be able to take that all off the table and see what is left.

J. Lampke added that Mr. Brodsky and he have had some discussion and that the time limitations that were mentioned as applicable at the last meeting may be longer under amendments to the Subdivision Law. You may have potentially as much as 135 days to act on it. Given the amount of time this project has been making its way through the review process in the Town, he would hope and urge the Board to act on it as reasonably and promptly as possible addressing all of the concerns. If there are any issues as to what time period should apply, he suggested that an agreement with Mr. Brodsky should be sought as to that. He agrees with H. Hibbard's suggestion how to move forward.

Mr. Brodsky stated for clarity that the time periods are provided in Chapter 41 Section 81U which deals with definitive plans. Its 90 days for a commercial project and 135 for a residential project. This is not a residential project so if this was a definitive plan that was submitted to you, you would have to act on it within 90 days otherwise it could potentially be a constructive approval. Mr. Brodsky stated that the statutes have changed for 60 to 90 days. Mr. Lampke added that the 135 days is in the case of a subdivision showing lots in a residential zone where no preliminary plan has been submitted and acted upon or 45 days has not elapsed and a definitive plan is submitted. For discussion viewing this as an amendment of the definitive plan, the law provides that an amendment or modification of a definitive plan goes through the same process as a

subdivision plan. Mr. Brodsky stated that this is a public way; they are not creating a private way into a subdivision. Mr. Brodsky stated they have not submitted a subdivision plan to the Board, or a request to amend the 1921 plan. That plan shows the layout of the way, it does not show the construction of the road. At that time, they didn't require the construction plans for the road. They are not changing that plan in the least so they have not submitted a plan, they are not asking the Board to sign a plan, they don't want to record a plan that is why they say that it is not related to subdivision. He added that there actually is no statute that requires the Planning Board to approve the construction of a public way. The Selectmen want you to do that, they have no problem with you doing that, but just to be clear there is no statute. He understands the Town's desire to put this in a neat box and say well if there is no statute it has to be a subdivision. He stated that it is not a subdivision, it is not a subdivision plan. They are going for the ride and providing the Board with waivers. He stated that he is not going to be able on the 91st day or the 136th day to go to the Town Clerk and file a certificate saying that they have a constructive approval. It is not an issue with respect to time at least from their perspective. They are happy to conform to the Board's wishes.

Mr. Lampke stated that he didn't think they will be able to reach an agreement on whether the subdivision process applies but another reason for the involvement of the Planning Board aside from all the others that have been stated is that the Building Commissioner to issue a building permit has to be on a way having frontage and that way is either in an approved subdivision or on a way that determined by the opinion of the Planning Board has sufficient characteristics to qualify is one other factor. Mr. Brodsky disagrees with this stating that the Land Court has already said that they have the benefit of a single lot exemption under 48 section 6. He stated that issue has already been resolved, they have frontage on a public way, the problem is that the road has not been fully constructed. Mr. Lampke stated that he did not raise that issue to cause Mr. Brodsky to respond about the issue of what the Land Court decision was, he was just making a general statement that the Building Commissioner needs to be satisfied on certain criteria and that is another reason for the Planning Board. In spite of what people may think or may be trying to do, we are trying to get this to the end line so that if this project is deemed appropriate can be approved. There may very well be a disagreement as to whether or not that decision which was based on certain plans exempts this lot from the frontage requirement or not. That is not an issue that he is trying to raise or bring in here. He is just pointing out that it is entirely appropriate for the Planning Board to be weighing in on road related matters.

Regarding the time limit of 135 days, J. Duffy asked if there is no definitive plan submitted why is that provision or statute applicable. We did not start from the beginning, we put an ad in the newspaper; did the ad mention a definitive plan. When informed that it did, he stated that we did not have one here; he has not seen one. Mr. Fultz and Mr. Lampke answered that the 1921 Subdivision Plan that is recorded is what is being used as the definitive plan. Mr. Lampke added that the law provides the authority of the Planning Board to modify, amend or even rescind a subdivision plan and that the law further provides that all provisions of the Subdivision Control Law relating to the submission and approval of a plan in a subdivision shall so far as act be applicable to the approval of the modification, amendment or rescission of such approval and to a plan that has been changed under this section. That section refers the Planning Board to follow the subdivision process. How it meshes in is part of the problem that everyone, applicant, Planning Board and the Town are trying to wrestle with. Mr. Lampke stated that the statute refers to the Board's authority to modify or amend the plan and follow this procedure. He believes that it presupposes that there would be a submission of a document along the lines of (included in standard guides used by many communities) a Form C Amendment Application for Approval of Amendment to Definitive Plan and Construction Extension of Streets is how we treated it here. We are trying to fit it into the best process that we can. J. Duffy asked if the change to the plan would be the dead end cul de sac. Mr. Lampke stated that is one of the changes, you have the plan that is on record, you the proposed changes; what is going to be constructed is going to be different than what is on that plan. J. Duffy asked if other parts of that road were different than shown on the plan as he thought was mentioned by one of the engineers. Mr. Lampke stated that he could not say that. J. Duffy added that if it was, it happened in the past with no formal Planning Board approval.

H. Hibbard stated that regarding the filing that is before the Board we'll treat it for these purposes in order to bullet proof the decision as a request for amendment so that would have to be approved. In addition, the waivers would then be in front of the Board and those would have to be approved. Is there anything else that the Board has to do to? He added that it sounds to him that there is a legal disagreement, a disagreement of interpretation that for practical purposes is largely irrelevant. We want to fit it into a certain box, we want to

make sure whatever decisions are made are bullet proofed, but practically speaking, it has little impact. No one is ever going to build the rest of So. Truro or No. Truro Street, no one ever could. Aside from approving the amendment and the waivers, are there any other issues that the Board has to address. Mr. Lampke answered that the Board of Selectmen has asked the Planning Board to weigh in on this proposal and address what its view is, what its opinion is, essentially very importantly what conditions the Planning Board feels under your jurisdiction what you recommend so that they can consider (they may not agree with it) that they can consider when we get to that stage where we are working out the agreement for Mr. Horne to extend the road.

R. Fultz added that there are a number of things that require conditions. There is a waiver of compliance and a number of these issues could be waived. Mr. Chessia should give his recommendations as to what any of those waivers he feels may be detrimental relating to the road construction. He added that he has sent Mr. Chessia's report to the relevant departments in Town for their comments in terms of materials and other engineering aspects that Mr. Chessia has brought up.

Regarding the mention of the request by the Selectmen, J. Duffy added that there was another provision in Chapter 41-81 that deals with that, when they want to approve a street or do something it is sent to the Planning Board and the Planning Board has a certain period of time maybe 45 days to weigh in with a report or not; is this under that or is something special. Mr. Brodsky answered that that was for the Board of Health. J. Duffy added there is a 41-81G that a number of Towns use that, if you look on line, a number of Towns use that to deal with street improvements similar to this. Does that waive, we can decide since this is all together with the subdivision control that we are okay here or does that come into play. J. Lampke reviewed the text in Section 41-81G. The body that is in charge of the public ways in the Town of Hull is the Board of Selectmen requested input from various sources particularly the Planning Board recognizing the Board's interest and expertise in roadways in the Town. Whether or not 41-81G applies or not, the Board is seeking your input. H. Hibbard asked if 41-81G applies would that require the Planning Board to make a decision about this as an alteration. J. Lampke stated that if 41-81G applies it requires that no public way shall be laid out, altered, relocated or discontinued in such ways not in accordance with the official map unless the provisions apply and unless the layout alteration has been referred to the Planning Board and the Board has reported or has allowed 45 days to elapse after such reference. H. Hibbard asked if at a minimum, the Board had to report a decision. J. Lampke stated that you would want to include everything in it. That is not like you are saying we don't know what is applicable and what is not applicable, anything that you are saying is applicable; can an argument be made that it might not be applicable as lawyers we all know that arguments can be made on anything. This seems to be an appropriate way to proceed.

J. Constable stated that one of the hurdles seems to be in defining the road, is it in fact a dead end or is it a minor road or a minor dead end. She stated that she is hearing both things from the proponent stating that the road is already there, it already exists you just want to repave it and in fact make some alterations to it. In essence you will be creating a dead end road which may or may not have consequences in terms of building. The Board may be in disagreement but she keeps coming back that is one of the first determinations. It sounds to her that the Board of Selectmen is looking for the Planning Board's input on making that determination. Mr. Brodsky stated that there are several kinds of streets that are defined in the subdivision regulations, one is a minor street, one is a dead end minor street. Their engineers say that this is a minor street based upon the definition because as it presently exists it doesn't conform to the definition of a dead end minor street. He stated that Mr. Chessia says, it could also be a dead end minor street and he does not think it matters because they are going to need waivers from those street requirements whether it is a minor street or a dead end minor street. Mr. Brodsky said their engineers say per the Town's definitions it is a minor street because it is a defined term. He said that we talk about it is a dead end street, we all have understanding how the road ends but legally if you look at your definition for it to qualify for a dead end minor street it must have 3 or 4 different elements and it does presently qualify for that so that is why we determined it to be a minor street. Mr. Chessia stated that he believes that it could be called a minor street. It is a dead end and the minor street doesn't say that it has to go through or there is a requirement or in the dead end section, a dead end can be 800 feet and a dead end minor he believes can only be 400 feet. The reason he thinks that the more he looks into it, is that he has seen that exact description in other towns because most towns seem to copy other town's regulations or someone wrote a master regulation that everybody bought sometime in the past and they been modified since and a minor road in another town that he looked at was almost the exact same definition

and they also had dead ends that were always to be dead ends that were smaller. You can have a dead end minor road up to 800 feet long in accordance with your regulations.

R. Fultz suggested that the Board with Mr. Chessia look at the waivers because you don't want to approve a waiver that is consistent with the bylaw just in general practically speaking to have a safe roadway. He stated that whether it is called a dead end or not, the Board should look at its purpose and its purpose is to make sure there is safe access for the residents. He feels that more time is needed to do this. J. Paquin agreed and confirmed with both Mr. Brodsky and Mr. Lampke that the Board was not under the 60 day deadline that the Board originally thought this process would fall under.

J. Lampke added that if we view this as a subdivision, in the case of a non-residential subdivision its 90 days, in the case of a subdivision showing an individual lot, it is 135 days. He stated that a simple solution would be to arrive at a date and see if the applicant will agree to it. R. Fultz stated that he thought the hearing could be continued until August 13th and added that the Board was trying to expedite the process as much as possible.

J. Paquin asked for the Board's opinion on whether or not they felt more time was needed for them and Mr. Chessia to review all of the information provided. H. Hibbard stated that he was confused about the need for further review. If he understands correctly, and maybe this will be the scope of the review, every waiver that was suggested in John's (Chessia) report is before the Board now in the request from Strong Civil Design. Mr. Brodsky stated that with the exception of the dead end minor street requirements, they can add those if the Board likes. H. Hibbard stated that if the idea; because of this legal uncertainty if the idea is to try to make this work under whatever interpretation ends up winning that would make sense. His other concern was that there were some requirements that needed further department review and asked that those also be identified specifically. R. Fultz stated that he has sent the entire report to each department of those department heads for their comment. Mr. Brodsky stated that unless he is mistaken that we have heard from all of the ones that had been listed last week. Mr. Fultz stated that they have heard from all of them but they were not reviewing it in terms of the Subdivision regs. Mr. Chessia has focused in for them on issues that the Board has to make sure that they respond to. H. Hibbard added that the Board would want those comments when the Board meets on the 13th. J. Paquin added that anything they could get ahead of time would be great. J. Duffy stated that he mentioned earlier that it would be helpful to sort through some of these issues is the Board could meet the engineers at the site and if one of the engineers could point out what these things are what we the Board need to do, what waiver they are seeking and how would it apply.

Mr. Brodsky stated that they have no problem with a site visit and they would want to have Steve and he may want to be there and Mr. Horne may want to be there. He added that he understands that the Board wants to continue the hearing and is not going to say anything with respect to the applicability of the subdivision deadlines, we are not agreeing with anything with respect to that, because his position is that it doesn't apply. J. Lampke asked, if this was a subdivision would it be a residential or non-residential subdivision in your opinion. Mr. Brodsky answered that they are not dividing land which is the definition of a subdivision. If you can divide land for the purposes of a commercial project, if you did that, he guesses that it would be subject to the 90 day deadline, if you are dividing land to create a residential lot, then it would be subject to the 135 day time period. J. Lampke asked hypothetically, if this was a subdivision as it exists now, and someone was coming in to have it amended or modified would you take the position that it was not a residential subdivision? Mr. Brodsky stated that he did not know the answer. H. Hibbard stated that the Board is trying to make sure this works no matter what interpretation prevails. August 13th is outside of the 60 day period. Mr. Brodsky stated that it was not outside of the 90 day period so you are okay if you ultimately conclude that this is a subdivision and you act within 90 days you are fine. J. Paquin stated that the Board needs to hear from Mr. Brodsky that it would be acceptable for them to go past what they thought was the 60 day period. She does not want to grant a constructive approval because they are told they did not do something. She stated that she needs to feel comfortable that this Board is taking the time and trying to do a good job that it's going to be honored. The Board will probably have one meeting in August and it could be two but they want to do this correctly for the Town and for the Applicant. Mr. Brodsky stated that having reviewing the subdivision statute and Chapter 41, he does not believe that there is any 60 day requirement anymore because he believes that Section 81U was amended to change it from 60 days to 90 days. J. Lampke added that the request for the extension is not just an issue under the subdivision but also that part of the other function that the Planning Board is supposed to be serving is to advise the Selectmen pursuant to their request for this information. He

asked Mr. Brodsky just assume for that alone, does the applicant have any objection. Mr. Brodsky stated that if the Board wants an extension to continue for another night they have no problem with that. He is just not making any representation regarding the legal affect to that under the Subdivision Control Law. H. Hibbard stated that he is not entirely satisfied; to say that you are fine with an extension but you are not saying anything about the Subdivision Control Law, they way that he is hearing it would not preclude you from raising the constructive approval. Mr. Brodsky stated that his problem is that if he signs a consent that says he consents to an extension under the Subdivision Control Law deadline as set forth in Chapter 40 he is precluded for arguing that it doesn't apply. J. Lampke asked, do you consent to a continuation of the hearing for all purposes other than what may be applicable under the Subdivision Control Law. Mr. Brodsky stated that he has already said that they have no problem with the Board continuing the hearing he is just not taking a position as to the application of the Subdivision Control Law.

R. Fultz stated that we need to get a sense from the Board regarding what H. Hibbard and he have talked about on how to proceed in terms of looking at the information and analyzing the information and that having a site visit as J. Duffy has stated.

J. Constable asked for a summary of exactly what would be addressed at the next meeting so that everyone is prepared on the 13th. R. Fultz stated that they were going to look at the latest waiver requests and have J. Chessia look at it and give the Board his comments in terms of if any of the waivers would make the project not compliant with the purpose of the Subdivision Control Regulations. What he is trying to see is if there are some of the places where they are asking for a waiver that could impact the functioning access to the roadway. The Board also needs to receive the responses from the Department Heads that J. Chessia had honed in on in terms of where they need to respond in the regulations. Also needed is the site visit. J. Duffy added that the information from D. Armstrong and J. Chessia both needed to be reviewed, not just the ones that D. Armstrong formally requested. R. Fultz added that he believed the statement earlier was that they responded to every single one that J. Chessia had noted. Mr. Brodsky added that with the exception of the dead end minor street.

Comments from the Public

Paul Gratta stated that there was no gas on the road.

Lloyd Emery stated that the neighborhood is already experiencing sewer problems. He is concerned that additional development would only make matters worse. It is his understanding that there are problems with the operation of the sewer system. He feels that this should be checked out. He stated that he finds it disturbing that the Town does not see fit to appeal the rulings that supersede the Town Board's findings and he is also bothered that there is no mechanism to notify abutters when a state ruling has reversed a local decision. He knows that this is not the purview of this Board but there should be some mechanism to notify at least direct abutters because you can't appeal something that you don't know is going on.

Irwin Nesoff wanted to refer back to the stormwater system and underscore the DPW's letter that expressed concern about the Stormwater Management System. He feels that this is a serious concern and also that the Civil Engineer talked about protection of natural features and wanted to remind the Board that this is an Area of Critical Environmental Concern so that the stormwater system is important. Mr. Nesoff read from his correspondence to the Board dated July 11, 2014; from the Watershed Management Institute's report that "Failure to perform adequate maintenance of stormwater management systems not only leads to reductions in expected or desired performance levels, but may even create conditions that are worse than if the facility had not been constructed at all". He stated that their concern is that this is a critical area and if that is not maintained over time they question what the guarantees are for subsequent owners to maintain that system and what happens if the system is not maintained; what it does to the area that is an environmental concern area. He also stated that he finds it interesting that Mr. Brodsky said that the 1988 rules and regulations that they are being held to and that they are outdated yet he keeps holding up a 1921 map of the subdivision showing streets that were never paved. So he feels that we need to be consistent about what we look at and what we don't. He also wanted to point out that there were a number of concerned people from No. Truro Street here tonight that are concerned about the maintenance of that system as well and the protection of that area.

William Horne stated that when that got peer reviewed by the Conservation Commission their engineer said that it would be an improvement from what is there now and that when the Board goes down there to do the site visit, he added that he has been asking for 7 years to get this cleared out so that his parents could go down and use his lot. He referred to a picture and stated that this is what it looks like and that Peter Lombardo had to take a fence down and the posts are still there and the boats and the cars are blocking the road and they can't get to it. He stated that he has been asking for 7 years to have it removed and it is not so would the Board please when you go down there have this removed so that he can get access to his property. He added that he has been paying taxes for over 20 years and he can't get to it with an automobile. He added that the surveyors had to park up the street and lug all of their equipment down and everybody had to because nobody would clear it. He is asking that the Board goes down to the site please clear it, he stated that he is being abused because no one will clear it. He has asked every department and the Board will see it. R. Fultz stated that the day after the last meeting he sent a message to the DPW and to the Town Manager. The Town Manager responded and he believed he forwarded it to Mr. Brodsky that the area would be cleared except for the brush. He will forward it to Mr. Brodsky. R. Fultz informed W. Horne that the Planning Board does not have the authority to make a physical change like that on a roadway. Mr. Horne asked then who does he contact. Mr. Brodsky added that it would be cleared with the exception of the brush.

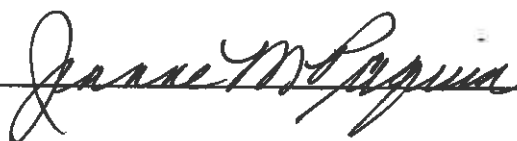
Elizabeth Parkes wanted to know what was going to be done about the neighbor's cars that are parked in the middle of the road; of course he could park in front of his house but he parks on the opposite side, 3 cars right across, he parks his boat at the end of the road. She stated that she would think that there was something that the police could do to remove those vehicles from the road. It is a public way and he should not be using it as a parking area. J. Duffy asked if she has been before the Board of Selectmen regarding this. Ms. Parkes indicated that she had not.

A Site Visit was scheduled for August 6, 2014 at 6:15pm

_____pm Upon a motion by H. Hibbard 2nd by J. Duffy and a vote of 6/0/0

It was voted to: Continue the hearing to August 13, 2014 and adjourn the Planning Board meeting

Minutes approved:



Date:

